UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 644

Case No. 704: THABET

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, First Vice-President, presiding; Mr. Luis de Posadas Montero, Second Vice-President; Mr. Mayer Gabay;

Whereas at the request of Mohammad Said Thabet, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 June and 30 August 1992 the time-limit for the filing of an application to the Tribunal;

Whereas, on 11 September 1992, the Applicant filed an application requesting the Tribunal, inter alia:

"...

3. To find and rule that the Respondent illegally applied the VMS [Vacancy Management System] during 1990-1991 to the selection of a candidate for the post of Chief (P-5) of Personnel Section in the Division of Administration at ESCWA [Economic and Social Commission for Western Asia]...

4. To find and rule that the Executive Secretary of ESCWA ... arbitrarily selected ... his own Special Assistant ..., as the candidate for the post of Chief of Personnel Section at ESCWA, effective from 24 March 1991.

...

6. To find and rule that the Respondent's decision not to appoint the Applicant as Chief of Personnel Section at ESCWA was clearly vitiated by denial of due process, prejudice, discrimination and extraneous considerations.

7. To order the Respondent, pursuant to article 9 of its Statute, to pay the Applicant appropriate and adequate compensation...

8. To direct the Respondent to give [him] full and fair consideration ... for promotion, at the earliest possible date, to a vacant P-5 post for which he is qualified, ..."

Whereas the Respondent filed his answer on 1 March 1993;

Whereas the Applicant filed written observations on 1 June 1993;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 1 October 1980, on a one year and three months intermediate term appointment, as a Regional Adviser at the L-3, step IV level, with the United Nations Environment Programme in the Regional Office for West Asia, Beirut, Lebanon. On 1 January 1982, the Applicant's appointment was extended for a year. He was transferred to Nairobi, Kenya, with effect from 15 October 1982. On 1 January 1983, the Applicant's appointment was extended for another year.

On 4 May 1983, the Applicant was transferred to the Economic and Social Commission for Western Asia (ESCWA) in Baghdad, Iraq, on a fixed-term appointment at the P-3, step VII level, as a Programme Management Officer. On 1 June 1984, the Applicant was granted a probationary appointment. The Applicant was reassigned to the ESCWA Personnel Section, as a Personnel Officer, with effect from 1 September 1984. He was assigned to Headquarters for a training period of one year. On 1 March 1985, his appointment became permanent.

The Applicant returned to Baghdad on 1 September 1985. On 5 September 1985, he was appointed Deputy Chief, Personnel Section. He was promoted to the P-4 level, with effect from 1 April 1986. On 7 June 1990, the Chief, Division of Administration, ESCWA, announced to the staff in ESCWA/IC/1990/66 that on account of the illness of the Chief of Personnel, the Applicant would "be the Officer-in-Charge of the Section until further notice." On 1 August 1990, the post was vacated and the Applicant continued to act as Officer-in-Charge. He was granted a Special Post Allowance to the P-5 level, from 20 December 1990 through 23 March 1991, when another staff member was selected to fill the post.

The Applicant was reassigned to the Programme Planning and Technical Cooperation Division, Technical Cooperation Unit, as Officer-in-Charge.

The P-5 post of Chief, Personnel Section, Division of Administration, ESCWA, was advertised in Vacancy Announcement No. 90-A-ECW-375-BG. Selection for the post was conducted under the Vacancy Management and Staff Redeployment System (VMS) established under administrative instruction ST/AI/338 and its addenda, then in force. The deadline for submission of applications was 10 September 1990. Interested staff members at the P-5 and P-4 levels were invited to apply. The Applicant was among the staff members who applied for the post.

On 23 January 1991, the Director, Recruitment and Placement Division, Office for Human Resources Management (OHRM), transmitted to the Chairman of the Appointment and Promotion Board (APB), a list of three names, including the Applicant's, who, in the opinion of OHRM, met the requirements for the post. The APB, at a meeting held on 24 January 1991, established a provisional short-list containing the same three names.

In a letter dated 27 March 1991, the Senior Recruitment and Placement Officer, Professional Staffing Service, OHRM, informed the

Applicant as follows: "Your candidacy has been carefully considered but I regret that another candidate has been selected".

On 10 April 1991, the Applicant requested the Secretary-General to review the administrative decision not to select him for the post. Not having received a substantive reply to his request, on 13 August 1991, the Applicant lodged an appeal with the Geneva Joint Appeals Board (JAB). The JAB adopted its report on 16 January 1992. Its conclusion and recommendation read as follows:

> "23. The Panel concludes that the Appellant's candidature for the post in question was accorded due consideration.
>
> 24. Accordingly, while it understands the concern of the Appellant for what he may view as lack of development of his career as a result of his non-selection, the Panel makes no recommendation in support of the present appeal."

On 20 January 1992, the Director, Office of the Under-Secretary-General for Administration and Management, transmitted to the Applicant a copy of the JAB report and informed him as follows:

> "The Secretary-General has reviewed your case in the light of the Board's report. He fully shares the Board's conclusion and has decided, in accordance with its recommendation, to reject your request for compensation."

On 11 September 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant had a legal expectancy of promotion to the post of Chief of Personnel Section, ESCWA.

2. The application of the VMS in 1990-1991, at the time of the filling of the post in question, was illegal and therefore violated the Applicant's rights.

3. The Respondent's decision not to appoint the Applicant to the post was vitiated by denial of due process, prejudice, discrimination and extraneous considerations.

Whereas the Respondent's principal contentions are:

1. Staff have no legal expectancy of promotion. The Applicant was considered for promotion in accordance with the procedures then in force. The fact that the Applicant was not promoted does not violate his rights.

2. The VMS in force at the time of the filling of the post was valid and did not result in denial of the Applicant's right to full consideration for promotion.

3. The Applicant's allegation that the selection process for the post was vitiated by denial of due process, prejudice, discrimination and extraneous factors is not supported by evidence.

The Tribunal, having deliberated from 29 June to 14 July 1994, now pronounces the following judgement:

I. The Applicant claims that there was an irregularity in filling the post of Chief of Personnel at ESCWA, a post for which he applied but which was filled by a candidate other than himself. In support of his claim, the Applicant submits that resort to the VMS was improper. He also submits that the successful candidate had only been with ESCWA for a few months before he was selected. The Applicant also claims that he was subject to prejudice, discrimination and extraneous considerations and that the principles of due process were not respected.

II. The Tribunal finds that:

A. The VMS was in force at the time the post was filled, i.e. in March 1991, as confirmed by the Upadhya judgement, rendered in November 1991. (Cf. Judgement No. 537, Upadhya (1991)).

B. Staff members who apply for vacant posts under the VMS are entitled to due consideration. As the Tribunal held in its Judgement No. 565, Al-Atraqchi (1992), paragraph V:

> "V. ...The VMS selection process according to ST/AI/338, is conducted in two steps: the applications are first considered by the APB and a short-list is drawn up and submitted to the head of the department concerned; then, the head of the department makes his choice. As far as the first step is concerned, detailed guidelines, to be followed by the APB, are set forth in Section II of ST/AI/338. Once the APB concludes its review, the decision rests with the head of the department. For this second phase, there are no guidelines. Under Section III of ST/AI/338, the head of the department concerned is free to choose any short-listed candidate he judges to be best qualified for the job."

C. The Applicant was duly considered for the post as his name appeared on the short list provided by the Appointment and Promotion Board. The Tribunal has held in Judgement No. 633, Al-Atraqchi (1991), paragraph IV that inclusion of a staff member's name on the short list establishes that the staff member was duly considered.

D. The Administration's final selection of a candidate for the post can only be challenged on the grounds of such factors as prejudice, mistake of fact, discrimination or other extraneous considerations. The fact that the successful candidate for the ESCWA post had only been with ESCWA for a few months is not sufficient to prove the existence of any of these factors.

E. The circumstances cited by the Applicant to show that the Administration had made a commitment to appoint him to the post are not sufficient to demonstrate the existence of such a commitment.

F. Due process was respected in the appointment of a candidate other than the Applicant to the post. There is no merit to the Applicant's claim that the absence of a "reasoned decision" in this context establishes a lack of due process.

G. The Applicant has not substantiated the existence of prejudice or other extraneous factors.

III. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
First Vice-President, presiding

Luis de POSADAS MONTERO
Second Vice-President

Mayer GABAY
Member

Geneva, 14 July 1994

R. María VICIEN MILBURN
Executive Secretary